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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,610	06/08/2001	Hiroyuki Koshino	0051-0155P	6442

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EXAMINER

MORAN, MARJORIE A

ART UNIT	PAPER NUMBER
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1631

DATE MAILED: 09/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/857,610

Applicant(s)

KOSHINO ET AL.

Examin r

Marjorie A. Moran

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-- The MAILING DATE of this c mmunication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *Request under 37 CFR 1.105*.

Information Disclosure Statement

It is noted that several of the references listed on the IDS filed 6/8/01 are not in English. Applicant states in the letter accompanying the IDS that the relevancy of WO97/44744 can be determined from a review of its English language abstract. It is noted that no English language abstract is supplied for any of Japanese documents 2-28879, 61-171435, and 3-53380; however, the letter accompanying the IDS states that relevancy is supplied by the fact that these documents are listed in an International Search Report. The examiner's initials on the IDS indicate that the Japanese language documents have been considered only to the extent included in applicant's "statement of relevance", as set forth in the letter accompanying the IDS.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-11 are directed to a molecular stereochemistry coding method apparently comprising a series of mathematical steps for data manipulation, equivalent to mental processes. Applicant is reminded that mental processes are not statutory subject matter under 35 USC 101.

The claimed method is not restricted to be a computer-implemented method; however, the specification indicates that the method is intended to be one implemented by a computer. In the event that the claimed method steps are implemented by a computer, the method claims are

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not statutory as any computer implemented method must produce a result which is concrete, tangible, and useful. As set forth in MPEP 2106.IV.B:

“In practical terms, claims define nonstatutory processes if they:

- consist solely of mathematical operations without some claimed practical application

(i.e., executing a “mathematical algorithm”); or

- simply manipulate abstract ideas, e.g., a bid (Schrader, 22 F.3d at 293-94, 30

USPQ2d at 1458-59) or a bubble hierarchy (Warmerdam, 33 F.3d at 1360, 31

USPQ2d at 1759), without some claimed practical application.”

As set forth in MPEP 2106.IV.B.2(b) (ii):

“A claim is limited to a practical application when the method, as claimed, produces a concrete, tangible and useful result; i.e., the method recites a step or act of producing something that is concrete, tangible and useful. See AT &T, 172 F.3d at 1358, 50 USPQ2d at 1452. Likewise, a machine claim is statutory when the machine, as claimed, produces a concrete, tangible and useful result (as in State Street, 149 F.3d at 1373, 47 USPQ2d at 1601) and/or when a specific machine is being claimed (as in Alappat, 33 F.3d at 1544, 31 USPQ2d at 1557 (in banc)). For example, a computer process that simply calculates a mathematical algorithm that models noise is nonstatutory.

It is not clear what the result produced by the method actually is (see below under 35 USC 112). The “practical application” toward which the claims are apparently directed is the generation of a group of conformation codes. However, a group of conformation codes, per se, is not a concrete, tangible, and useful result. See below regarding utility of the claimed method. As the claims merely recite steps of mathematically manipulating data, and the

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claimed method does not produce a concrete, tangible and useful result, claims 1-11 do not recite statutory subject matter.

Claim 12 is directed to a computer readable medium comprising a program for running a method similar to that of claim 1. Claim 12 does not recite any structural limitations, and may actually be directed to paper upon which the program is typed. As many types of media, including paper, can be "scanned" or read by a computer, mere recitation of a "computer-readable medium" does not limit the claimed product to any particular form, structure, or composition. Applicant is reminded that recorded material, such as songs, books, etc. are not patentable subject matter under 35 USC 101, but may be protected under copyright. MPEP 2106.IV.A.2(a) states:

"The mere fact that a hardware element is recited in a claim does not necessarily limit the claim to a specific machine or manufacture." See also *In re Iwahashi*, 888 F.2d 1370, 1374-75, 12 USPQ 2d 1908, 1911-12 (Fed. Cir. 1989), recited with approval in *Alappat*, 33 F.3d at 1544 n.24, 31 USPQ2d at 1558.

It is noted that a claim may be statutory when it identifies the physical structure of an item of manufacture in terms of its hardware, or a hardware and software combination. Claim 12 does not recite any physical or hardware limitations, as set forth above. It is also noted that a claim to a product which has a practical application in the arts may be statutory; e.g. a computer comprising a program which produces a concrete, tangible, and useful result, as decided in *Alappat* (31 USPQ2d 1557) and *State Street* (47 USPQ2d 1601). As set forth above, the claimed method does not produce a concrete, tangible and useful result, therefore the computer readable medium comprising a program for running such a method would not have a practical application in the arts, and is not statutory.

Claims 1-12 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility.

Claims 1-12 are directed to a molecular stereochemistry coding method and a computer readable medium comprising a program for running the method. The method and program apparently comprise steps of mathematically manipulating data.

It is not clear what the result produced by the method actually is (see below), but it appears to be a group of conformation codes "with respect to" start atoms. The "usefulness" of a group of conformation codes, for an unknown molecule, is not apparent. The specification does not assert any particular utility for the claimed method and program. The specification suggests, on pages 1-2, that stereochemical coding can be used to compare the three-dimensional conformation of molecules, or can be used to predict NMR chemical shifts. It is noted, however, that the claimed method is not directed to prediction of NMR chemical shifts, nor to comparison of molecules. Further, it is noted that in order for stereochemical coding information to be useful for these purposes, other information specific to a compound is required; e.g. identity, relationship to another molecule, NMR data, etc. In addition, the specification discloses that, in order for stereochemistry of molecules to be compared, both configuration and conformation codes are required (see pages 22-23) and further method steps are necessary to carry out the comparison; i.e. further research is required (see pages 23-34). As set forth on page 24, in order for a prediction of NMR chemical shifts to be made, three different sets of codes are required, in addition to further method steps. Again, as prediction of an NMR chemical shift requires further research. As set forth in *Brenner v. Manson* (148 USPQ 689 (1966)) and *In re Ziegler* (26 USPQ2d 1600), the "usefulness" of an invention must be immediately apparent to those familiar with the technological field of the invention. As further

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research, mathematical calculations, and method steps would be required to "use" the conformation codes presumably resulting from the claimed method and program, the apparent result of the method and program is not "immediately useful" and lacks utility.

Claims 1-12 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either an asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. Specific rejections with regard to independent claims 1 and 12 are set forth below. It is noted that dependant claims 2-11 are also rife with limitations which are indefinite for reasons similar to those set forth for claims 1 and 12; however, specific rejections are not set forth as it is hoped that rewriting of ALL of the claims to conform with English grammatical rules and current US practice for writing claims will obviate most or all of the problematic limitations. For all of the claims, the examiner suggests that a person familiar with English review the claims and rewrite them to clearly recite active, positive

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steps using commonly understood English terminology, consistent with applicant's intent and the originally filed disclosure. Applicant is advised to review any amendment to avoid inadvertent introduction of new matter.

Claims 1-12 recite a method and a program presumable comprising method steps; however, no positive, active method steps are actually recited in the claims. For example, claim 1 recites "a hierarchy classifying step of assigning..." but does not actually recite ANY step of classifying a hierarchy. Claim 1 further recites "a molecular tree forming step" but does not recite any step of actually forming a molecular tree. These are only examples; all of the claims have multiple, similar problems. Since the claims do not set forth any actual steps involved in the method/program, it is unclear what method/program applicant is intending to encompass, and the claims are indefinite.

Claims 1 and 12 recite the phrase "which is to be noticed" with regard to start atom and recite a coding step "of noticing" an atom. It is unclear what limitation of the start atom or method step is intended by "noticing" an atom, therefore the claims are indefinite.

Claims 1 and 12 recite "assigning an atom" twice within the "hierarchy classifying step." The claims recites that the atom is to be assigned to either or both of a first and second hierarchy. It is unclear if the atom is intended to be the same in both recitations of the term, (i.e. the same atom is assigned to two different hierarchies), or is intended to be different (a first atom assigned to a first hierarchy and a second atom assigned to a second hierarchy), therefore the claims are indefinite. If applicant intends the latter, then the examiner suggests inserting --first-- and --second-- before "atom" where appropriate. If applicant intends the former (same atom assigned to two hierarchies), then it is noted that this limitation does not appear to be supported or enabled by the specification. However, as it is unclear what applicant intends, the claims are rejected herein only for indefiniteness.

Claims 1 and 12 recite that an atom is "to be combined with" another atom, twice in a "hierarchy classifying step" and several times in a "coding step." It is unclear what method step is intended by the phrase "combined with"; i.e. covalently bonded to, placed in physical conjunction to, fused, etc. therefore the claims are indefinite. It is noted that the method and program appear to represent steps performed on data; however, it is not clear whether the "combining" of atoms is intended to be virtual or physical, therefore the claims are further indefinite.

Claims 1 and 12 recite "combining" an atom with a start atom "on a higher hierarchy side". It is unclear what limitation applicant intends by the phrase "on a higher hierarchy side", therefore the claims are indefinite.

Claims 1 and 12 recite the limitation "the final hierarchy" in a "hierarchy classifying step." There is insufficient antecedent basis for this limitation in the claims for "the final hierarchy", therefore the claims are indefinite.

Claims 1 and 12, with regard to a final hierarchy, recite the phrase "which is set so as to be specially requested". This phrase appears nonsensical and the limitation or method step intended by applicant to be represented by this phrase is unclear, therefore the claims are indefinite.

Claims 1 and 12 recite a step of "setting a predetermined precedence rule". This is nonsensical. If the reference rule is predetermined, then it need not be set. If the intent is to set a precedence rule, then the rule cannot have been predetermined. If the intent is to select or choose a "predetermined" rule to be applied in the method, then it is noted that no step of "determining", calculating, establishing, etc. a precedence rule is recited in the claims, such that a "predetermined" preference rule may be chosen or applied. The phrase, as currently recited

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in the claims, does not make sense, and it is not clear what step applicant intends by the phrase, therefore the claims are indefinite.

Claims 1 and 12 recite the phrase "in the order" twice in a "molecular tree forming step." There is no antecedent basis for the term "the order" in the claims, and it is unclear what "order" is to be followed for placing atoms (i.e. in WHAT order?), therefore the claims are indefinite. Further, claims 1 and 12 recite placing atoms "which belong in the same hierarchy, in the order" twice. The first recitation recites placing a "plurality of atoms" in order, then recites placing "said atoms" in order. Since the antecedent basis for "said atoms" appears to be the "plurality of atoms", then it appears that the same atoms are placed in "the order" twice. It is unclear what the distinction is between the two steps of placing atoms in order (i.e. are the atoms re-ordered in the second "ordering", subjected to a different set of rules for ordering?, etc.) The lack of differentiation between atoms and step or steps of placing atoms in order renders the claims confusing and therefore indefinite.

Claims 1 and 12 recite the phrase "in the order every hierarchy" in a "molecular tree forming step." This phrase is nonsensical, therefore the claims are indefinite. If applicant intends to place atoms in order *in* every hierarchy, then the examiner suggests inserting the term --in-- before "every" in the recited phrase in each claim.

Claims 1 and 12 recite "to form a molecular tree every said start atom". This phrase is nonsensical, therefore the claims are indefinite.

Claims 1 and 12 recite "a coding step" of "noticing one of the atoms...with respect to each of integers". It is unclear what is meant by "noticing" an atom, as set forth above. It is further unclear what limitation is intended by "with respect to each of the integers". Is the "noticing" performed "with respect" to each integer, or is the "coding step" performed "with respect" to each integer, or is there some other step, not specifically recited, which applied "with

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respect" to each integer? As it is unclear what limitation of the integers, or what method step is intended by the combination of phrases recited, the claims are indefinite.

Claims 1 and 12 recite the phrase "assuming that n is an integer of 0 or more". This is not a definite limitation of an integer or the method, therefore the claims are indefinite. If applicant intends to limit n to be an integer of 0 or more, then the examiner recommends explicitly reciting such a limitation.

Claims 1 and 12 recite a variety of planes "formed by" a group of atoms. It is unclear whether the applicant intends a method step (i.e. a forming planes), intends a product-by-process limitation (i.e. intends planes which are formed from and are therefore defined only by the recited atoms), or merely intends planes that comprise the recited atoms, therefore the claims are indefinite.

Claims 1 and 12 recite a series of limitations in a "coding step" for comparing planes, followed by the phrase "with respect to a group...." It is unclear what the group is intended to be "with respect to"; i.e. derivation of a dihedral angle, a single plane, multiple planes, the atoms in the planes, etc., therefore the claims are indefinite.

Claims 1 and 12 recite "replacing" a dihedral angle "into an angular symbol" in a "coding step." One skilled in the art does not generally "replace" an angle "into" a symbol. It is unclear if applicant intends to place the angle (as a geometric figure?) into a symbol of some sort, intends to replace the angle, per se, with a symbol, intends to represent the angle with a symbol, or intends some other method step involving the angle and a symbol. As the limitation intended by applicant is unclear, the claims are indefinite.

Claims 1 and 12 recite, after the "replacing" phrase above, the phrase "which is defined..." It is unclear what is defined; i.e. the dihedral angle, the symbol, or the product resulting from the combination of angle and symbol, therefore the claims are indefinite.

Claims 1 and 12 recite the term “predetermined angle dividing rule”. As there is no step of determining or previously providing an angle dividing rule, it is unclear what limitation is intended by a “predetermined” dividing rule, and the claims are indefinite.

Claims 1 and 12 recite “in accordance with the magnitude of the dihedral angle”. It is unclear what is intended to be “in accordance with the magnitude...”; i.e. the predetermined angle dividing rule, the defining of the previous sentence of the claim, the replacing of an angle into a symbol, etc. , therefore the claims are indefinite.

Claims 1 and 12 recite “giving the replaced angular symbol to the noticed atom”. Claims 1 and 12 also recite “giving angular symbols..with respect to other atoms to be noticed”. As set forth above, it is unclear what step is intended by “noticing” an atom, therefore it is also unclear what is meant by a “noticed atom” or “atoms to be noticed”. Further, a previous step recited replacing an angle *into* an angular symbol, not replacing the angular symbol itself, therefore the antecedent basis for “the replaced angular symbol” is unclear. Finally, the step or limitation intended by “giving” a symbol to, or with respect to, an atom is unclear. For all of these reasons, recitation of the phrase “giving the replaced angular symbol to the noticed atom” renders the claims indefinite.

Claims 1 and 12 recite a step of “setting a predetermined linear notation rule”. This is nonsensical. If the linear notation rule is predetermined, then it need not be set. If the intent is to set a linear notation rule, then the rule cannot have been predetermined. If the intent is to select or choose a “predetermined” rule to be applied in the method, then it is noted that no step of “determining”, calculating, establishing, etc. a linear notation rule is recited in the claims, such that a “predetermined” linear notation rule may be chosen or applied. The phrase, as currently recited in the claims, does not make sense, and it is not clear what step applicant intends by the phrase, therefore the claims are indefinite.

Claims 1 and 12 recite the limitation "said plurality of angular symbols" in the last paragraph of each claim. There is insufficient antecedent basis for this limitation in the claims, therefore the claims are indefinite. It is noted that "dihedral angles" is recited in the penultimate paragraph of each claims, but that the term "plurality of dihedral angles" is not, therefore there is not antecedent basis for the specific phrase "the plurality of dihedral angles".

The last paragraph of each of claims 1 and 12 recites "preparing a conformation code...with respect to said start atom" and "preparing conformation codes with respect to other start atoms". The first paragraph of each claim recites start atoms, therefore the apparent steps of "preparing" conformation codes does have some connection to the rest of the claim; however, there is nothing which links preparation of conformation codes to any other step in the recited method. It is unclear what relationship, if any, exists between preparing a conformation code and any other step of the claimed method. The lack of a recited connection or relationship between steps amounts to a gap in the method steps, therefore the claims are rejected. See MPEP § 2172.01.

Claims 6-8 recite the term "CANOST", which appears to be a tradename. Trademarks and tradenames may change over time and/or may refer to a multiplicity of products, therefore the recitation of a trademark or tradename in a claim is not a recitation of a definite limitation. The examiner suggests deleting the trademark or tradename, or reciting the product using generic terms.

Request for Information under 37 CFR 1.105

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

The information is required to complete the background description in the disclosure by documenting what was/is known in the art with regard to representation of three dimensional structures in a linear format. The specification vaguely refers to "background art" on page 1, but does not specifically point to any particular reference(s) such that examiner is (a) actually apprised of what the applicant considers to be the background or general area of his invention, or (b) can indeed compare "background art" to applicant's inventive method and apparatus.

In response to this requirement, please provide a list of keywords that are particularly helpful in locating publications related to the disclosed art of CANOST codes, stereo codes, configuration identification codes, and any other coding deemed by applicant to be relevant to the claimed invention.

In response to this requirement, please provide copies of each publication which any of the applicants authored or co-authored and which describe the disclosed subject matter of stereochemical coding.

In response to this requirement, please provide the title, citation and copy of each publication that is a source used for the description of the prior art in the disclosure. For each publication, please provide a concise explanation of that publication's contribution to the description of the prior art.

In response to this requirement, please provide the title, citation and copy of each publication that any of the applicants relied upon to develop the disclosed subject matter that describes the applicant's invention, particularly as to developing stereochemical coding, specifically using configuration, conformation, and planar structure codes. For each publication, please provide a concise explanation of the reliance placed on that publication in the development of the disclosed subject matter.

In response to this requirement, please provide the title, citation and copy of each publication that any of the applicants relied upon to draft the claimed subject matter. For each publication, please provide a concise explanation of the reliance placed on that publication in distinguishing the claimed subject matter from the prior art.

In responding to those requirements that require copies of documents, where the document is a bound text or a single article over 50 pages, the requirement may be met by providing copies of those pages that provide the particular subject matter indicated in the requirement, or where such subject matter is not indicated, the subject matter found in applicant's disclosure.

The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained will be accepted as a complete reply to the requirement for that item.

This requirement is an attachment of the enclosed Office action. A complete reply to the enclosed Office action must include a complete reply to this requirement. Applicant is advised that any reply to the Office Action prior to compliance with the requirement under 37 CFR 1.105

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will be considered nonresponsive. The time period for reply to this requirement coincides with the time period for reply to the enclosed Office action.

Conclusion

Claims 1-12 are rejected.

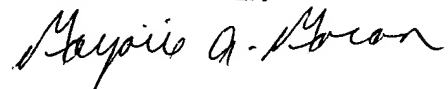
This Office action has an attached requirement for information under 37 CFR 1.105. A complete reply to this Office action must include a complete reply to the attached requirement for information. The time period for reply to the attached requirement coincides with the time period for reply to this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marjorie A. Moran whose telephone number is (703) 305-2363. The examiner can normally be reached on Monday to Friday, 7:30 am to 4 pm EST.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (703) 308-4028. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3524.

MARJORIE MORAN
PATENT EXAMINER



mam



MICHAEL P. WOODWARD
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